

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
THE CHEMITHON CORPORATION, )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB Nos. 197 and 402

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THESE MATTERS being an appeal of a \$250.00 civil penalty for a  
smoke emission violation and the appeal of a \$100.00 civil penalty for a  
violation of a notice of construction requirement having come on regularly  
for hearing before the Pollution Control Hearings Board on November 27,  
1973 at Seattle, Washington; and appellant The Chemithon Corporation  
appearing through its attorney J. Richard Aramburu, and respondent,  
Puget Sound Air Pollution Control Agency appearing through its attorney,  
Keith D. McGoffin; and Board members present at the hearing being  
Walt Woodward; and the Board having considered the sworn testimony,

1 exhibits, records and files herein and written closing arguments of  
2 counsel and having entered on the 2nd day of January, 1974, its  
3 proposed Findings of Fact, Conclusions and Order; and the Board having  
4 served said proposed Findings, Conclusions and Order upon all parties  
5 herein by certified mail, return receipt requested and twenty days  
6 having elapsed from said service; and

7 The Board having received exceptions to said proposed Findings,  
8 Conclusions and Order from appellant and reply to exceptions from  
9 respondent and having considered same and denied appellant's exceptions;  
10 and the Board being fully advised in the premises; now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
12 Findings of Fact, Conclusions and Order, dated the 4th day of January,  
13 1974, and incorporated by this reference herein and attached hereto as  
14 Exhibit A, are adopted and hereby entered as the Board's Final Findings  
15 of Fact, Conclusions and Order herein.

16 DONE at Lacey, Washington this 20<sup>th</sup> day of March, 1974.

17 POLLUTION CONTROL HEARINGS BOARD

18 Walt Woodward  
19 WALT WOODWARD, Chairman

20 W. A. Gissberg  
21 W. A. GISSBERG, Member

22 Mary Ellen McCaffree  
23 MARY ELLEN McCAFFREE, Member

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27 FINAL FINDINGS OF FACT,  
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FINDINGS OF FACT,  
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These matters, by agreement of counsel, came seriatim before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at formal hearings in the Washington Commerce Building, Seattle, Washington, immediately after an unsuccessful informal conference in PCHB No. 197 at 10:00 a.m., Tuesday, November 27, 1973. PCHB No. 402 is the appeal of a \$250.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; PCHB No. 197 is the appeal of a \$100.00 civil penalty for an alleged violation of a notice of construction requirement of Resolution No. 143 of respondent's Board of Directors.

Appellant appeared through J. Richard Aramburu; respondent through

1 Keith D. McGoffin. Barbara Dowd, Tacoma court reporter, reported  
2 the proceedings.

3 Witnesses were sworn and testified. Exhibits were admitted.  
4 Written closing arguments were submitted.

5 From testimony heard, exhibits examined, arguments considered and  
6 transcript reviewed, the Pollution Control Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 Appellant, a world leader in the manufacture of detergent-making  
10 equipment, operates a detergent manufacturing and research facility at  
11 5430 W. Marginal Way S.W., Seattle, King County.

12 II.

13 In the research and development of a process to control drier  
14 emissions, appellant and respondent agreed in 1970 to a compliance  
15 schedule and, later, to certain extensions thereof. On March 8, 1972,  
16 by Resolution No. 143, the Board of Directors of Puget Sound Air Pollutio  
17 Control Agency, granted to appellant a variance from Sections 9.03,  
18 9.04 and 9.09 of respondent's Regulation I until February 28, 1973,  
19 subject to seven specified conditions. Among those conditions was that  
20 appellant submit a notice of construction to respondent by June 30, 1972,  
21 for the full scale, spray drier control system.

22 III.

23 Such notice of construction was not submitted by June 30, 1972.  
24 Research had not been completed by that time and appellant, therefore,  
25 was unable to submit the required notice. Appellant, however, did not  
26 notify respondent of this difficulty. On August 14, 1972, respondent's

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1 control officer sent to appellant a written reminder of the overdue  
2 notice of construction.

3 IV.

4 On September 7, 1972, appellant was served by respondent with  
5 Notice of Violation No. 5554, citing a violation of Resolution No. 143,  
6 and on September 21, 1972, in connection therewith, respondent served  
7 appellant with Notice of Civil Penalty No. 446 in the amount of \$100.00.  
8 That penalty is the subject of the appeal in PCHB No. 197.

9 V.

10 Appellant was cited by respondent's staff to show cause before  
11 respondent's Board of Directors why the variance granted in Resolution  
12 No. 143 should not be vacated. After a continued hearing and a conference  
13 between respondent's staff and appellant, respondent's Board of  
14 Directors, by Resolution No. 173, on December 13, 1972, dismissed the  
15 show cause order, extended Resolution No. 143 and the variance granted  
16 therein as to notice of construction to January 31, 1973, and as to  
17 completion to March 31, 1973.

18 VI.

19 On May 18, 1973, at 9:30 a.m., appellant's production manager, on  
20 orders of appellant's president, notified respondent by telephone that  
21 appellant would conduct a test on its spray tower. Two inspectors,  
22 dispatched by radio to appellant's plant, recorded blue smoke visual  
23 emissions of 55 to 60 percent opacity from appellant's spray drier  
24 stack for 15 minutes beginning at 10:22 a.m. They served appellant  
25 with Notice of Violation No. 7867, citing Section 9.03(a)(1) of  
26 respondent's Regulation I. Subsequently, and in connection therewith,

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1 respondent served appellant with Notice of Civil Penalty No. 900 in  
2 the sum of \$250.00. That penalty is the subject of the appeal in  
3 PCHB No. 402.

4 VII.

5 Appellant contends, but did not prove, that the quashing of the  
6 show cause order relieved appellant of further responsibility in  
7 PCHB No. 197.

8 VIII.

9 Appellant contends, but did not prove, that Resolution No. 173  
10 gives appellant the right to conduct various product emission tests  
11 if, prior to the test, appellant notifies respondent that the test  
12 is about to be conducted.

13 IX.

14 Section 9.03(a)(1) of respondent's Regulation I makes it unlawful  
15 to cause or allow the emission for more than three minutes in any one-hou  
16 period of an air contaminant whose opacity is greater than 40 percent.  
17 Section 3.29 of respondent's Regulation I authorizes a civil penalty of  
18 not more than \$250.00 for a violation of Regulation I. Section 7.01  
19 of respondent's Regulation I authorizes respondent's Board of Directors  
20 to issue variances upon application for same.

21 From these findings, the Pollution Control Hearings Board comes  
22 to these

23 CONCLUSIONS

24 I.

25 Testimony in these related matters makes clear that there is and  
26 has been for several years a consistent lack of rapport between this

27 FINDINGS OF FACT,  
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1 Seattle industrial firm and this governmental agency charged with  
2 the major responsibility of clean air in the state's largest  
3 municipality.

4 At the direction of the presiding officer, the transcript of  
5 the abortive informal conference precedent to the formal hearing has  
6 been preserved to show this almost complete lack of rapport. The Board,  
7 making its decision in this unpleasant atmosphere, therefore first comes  
8 to the overriding conclusion that sincere cooperation by both entities  
9 is to be desired to avoid similar difficulties in the future.

## 10 II.

11 As to PCHB No. 197, two factors are apparent from the testimony:  
12 (1) appellant, still uncertain as to its research, failed to file  
13 the required notice of construction even after receiving a past-due  
14 reminder and request to file same and (2) appellant held the mistaken,  
15 but understandable, opinion that quashing of the show cause matter  
16 took care of the civil penalty. The Board, therefore, finds appellant  
17 in violation of Resolution No. 143 as cited in Notice of Violation  
18 No. 5554. The penalty, in view of all the circumstances, now does not  
19 appear to be reasonable.

## 20 III.

21 As to PCHB No. 402, there is nothing in the record to sustain  
22 appellant's belief that either Resolution No. 143 or Resolution No. 173  
23 gives him the right to conduct emission-causing tests of its facility.  
24 Those resolutions provided variances, which did permit testing, but  
25 only during the specified effective dates of the variances. Appellant's  
26 telephone call to respondent on May 18, 1973, carried with it no permissi

27 FINDINGS OF FACT,  
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1 to conduct an emission-causing test because the closing date of the  
2 last effective variance (Resolution No. 173) was March 31, 1973. The  
3 Board, therefore, finds that appellant was in violation of Section 9.03(a)  
4 as cited in Notice of Violation No. 7867. The penalty appears to be  
5 reasonable.

6 This is not to say that respondent's Board should not grant a  
7 variance which, from time to time, would permit appellant to conduct  
8 research smoke-emission testing. It would appear that appellant's  
9 position as a world leader in the manufacture of detergent-making  
10 equipment demands that such tests be made. Respondent's Board has  
11 the authority to permit such tests by variance. This Board is  
12 confident that respondent's Board would give appellant a fair hearing  
13 on such a variance if appellant would request same.

14 Therefore, the Pollution Control Hearings Board issues this

15 ORDER

16 Both appeals are denied. Notice of Civil Penalty No. 446 is  
17 remanded to respondent for the setting of the more appropriate sum  
18 of \$25.00. Notice of Civil Penalty No. 900 is sustained in the  
19 amount of \$250.00.

20 DONE at Lacey, Washington, this 2nd day of January, 1974.

21 POLLUTION CONTROL HEARINGS BOARD

22 Walt Woodward  
23 WALT WOODWARD, Chairman

24 W. A. Gissberg  
25 W. A. GISSBERG, Member

26 Mary Ellen McCaffree  
27 MARY ELLEN McCAFFREE, Member

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